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Exempting Food and Agriculture Products from U.S. Economic Sanctions: Current Issues and Proposals

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Remy Jurenas
Resources, Science, and Industry Division

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CRS Report 97-949, Economic Sanctions to Achieve U.S. Foreign Policy Goals: Discussion and Guide to Current Law

CRS Report RL30384, Economic Sanctions: Legislation in the 106th Congress

Exempting Food and Agriculture Products from U.S. Economic Sanctions: Current Issues and Proposals

SUMMARY

Falling agricultural exports and declining commodity prices have led to renewed efforts by agricultural groups to win a change in U.S. sanctions policy. Many in agriculture would like to exempt food products and agricultural commodities from prohibitions and restrictions on their export to targeted countries. Numerous proposals have been offered in the 106th Congress to this end, including a provision in the agriculture appropriation pending in both the House and Senate. In the face of strong opposition to the provision, a compromise alternative was developed early on June 27, 2000, that is now the focus of current debate.

The Clinton Administration, in principle, favors exempting food and medicine from sanctions measures for humanitarian reasons. However, it has signaled concern that provisions in some bills would unduly limit the President's range of options in conducting foreign policy. Those in favor of exempting agricultural and food exports from U.S. sanctions argue that food should not be an instrument of foreign policy, that such sanctions rarely are effective, and that they almost always harm U.S. farmers and agribusiness. Opponents of an exemption fall into two categories: those that object to the relaxation of trade with certain countries (e.g. Cuba), and those who contend that current law gives the President sufficient flexibility to exempt food for humanitarian reasons.

Cuba is seen by many in agriculture as a potential market for some \$700 million in U.S. farm sales. Others view opening up trade with Cuba as a way to pursue a "constructive engagement" policy with that country. Opponents charge that an exemption undercuts U.S. embargo policy designed to keep maximum

pressure on Castro's government until political and economic reforms are attained.

In July 1999, the Administration formalized rules allowing licensed commercial sales of food and medical products to some countries with U.S. sanctions – Iran, Libya, and Sudan. Senate language to codify this exemption and extend it to Cuba, Iraq and North Korea was stricken from the conference report on the FY2000 USDA appropriation.

A similar sanction exemption effort this year tied up congressional consideration of the FY2001 agriculture appropriations measure (H.R. 4461). This bill and its Senate counterpart (S. 2536) contain nearly identical language to lift sanctions on food and agriculture commodities. Opposition had come primarily from opponents of U.S. trade with Cuba (the subject of a comprehensive U.S. trade embargo since 1962).

The June 27 alternative would permit U.S. exports of food and medicine to Cuba, Iran, North Korea, Libya, and Sudan, with numerous restrictions. For example, sales to Cuba could not be supported by either U.S. private or government-backed credit (i.e., no credit guarantee programs, export subsidies, direct barter, etc.) Cuba, along with Iran, also would be prohibited from exporting products to the United States. Congressional leaders on June 29 were considering whether to place the compromise in a FY2000 supplemental conference report that will be part of the FY2001 military construction appropriation (H.R. 4425) or to reattach it to the FY2001 USDA appropriation, possibly when it reaches conference later this session.

MOST RECENT DEVELOPMENTS

Both the House and Senate Appropriations Committees in early May approved nearly identical amendments to their FY2001 agriculture spending measures (H.R. 4461; S. 2536) to exempt food and medical products from current and future U.S. unilateral economic sanctions. Floor action on the measure was delayed after House opponents to the sanctions exemption (especially for Cuba) threatened to strike this provision on a point of order. In the face of this strong opposition (including by House leadership), a compromise alternative was developed early on June 27, 2000, that is now the focus of current debate. This compromise, which would permit food and medical sales to Cuba and several other countries under restricted conditions, could be placed in a FY2000 supplemental conference report that in turn is expected to be part of the FY2001 military construction appropriation. An alternative approach also under consideration might be to reattach the compromise language to the FY2001 agriculture appropriations measure, possibly when it reaches conference later in the session. However, whether the language ultimately will be accepted by the House and Senate, and which legislative vehicle would carry it, was unclear as of June 29.

BACKGROUND AND ANALYSIS

Current Policy and Recent Changes

The Clinton Administration on April 28, 1999, announced it would lift prohibitions on U.S. commercial sales of most agricultural commodities and food products to three countries -- Iran, Libya, and Sudan. Moreover, it indicated that it would not include these products in announcing future sanctions on other countries. The Administration's decision reflects the view that food should not be used as a foreign policy tool and officials' acknowledgment that U.S. sanctions policy has hurt the U.S. farm economy. On July 27, 1999, the U.S. Department of Treasury issued country-specific export licensing regulations to exempt commercial sales of food and medical products by U.S. companies that meet specified conditions and safeguards to Iran, Libya, and Sudan. Licenses are issued by the Treasury's Office of Foreign Assets Control (OFAC). Recent press accounts indicate that the Administration shortly will announce a similar policy for North Korea as part of a broader relaxation of U.S. sanctions on that country.

Since the new policy went into effect, Treasury has approved licenses that have resulted in U.S. sales of corn to Iran, durum wheat to Libya, and hard red winter wheat to Sudan. Also, the President, in issuing executive orders last year to impose U.S. economic sanctions on Serbia and the Taliban in Afghanistan, specifically exempted food and medical products from their coverage.

The U.S. government now generally prohibits commercial exports of U.S. agricultural products as part of across-the-board sanctions on Cuba, Iraq, and North Korea. A few small sales or donations have been permitted for non-governmental entities in these areas. Also,

the United States has, from time to time, granted licenses for the sale or donation of food and agriculture products to these and other nations for humanitarian reasons.

Impact of Sanctions on U.S. Agricultural Sector

Reflecting the situation prior to the Administration's announcements, the six countries (Cuba, Iran, Iraq, Libya, Sudan, and North Korea) subject to U.S. sanctions in recent years account for a relatively small share of world agricultural trade. In 1998, they purchased \$7.7 billion of agricultural products (almost 2% of worldwide agricultural imports). The U.S. Department of Agriculture (USDA) estimates that U.S. economic sanctions on these six countries reduced U.S. agricultural exports by roughly \$500 million in 1996. There are no reported figures for the impact this loss may have had on the overall U.S. farm economy. CRS estimates that based on the USDA projections of "lost export sales," farm income may have been reduced by some \$150 million, overall U.S. economic activity by an estimated \$1.2 billion, and U.S. jobs by about 7,600 (CRS Report RL30108). This reduced farm income estimate would represent about one-quarter of 1% of 1996 U.S. farm income, although there may be greater impact for some commodities.

For additional information on the use of sanctions that restrict U.S. agricultural exports and exceptions to their use, data on the value and mix of agricultural products that sanctioned countries import, estimates of the extent to which U.S. agricultural exports were reduced in 1996 as a result of these sanctions and their impact on the U.S. economy, and Treasury's regulations to implement the 1999 policy change, see CRS Report RL30108, *Economic Sanctions and U.S. Agricultural Exports*.

Debate on Agricultural and Food Exports in U.S. Economic Sanctions Policy

Many farm organizations, agricultural commodity associations, and agribusiness firms favor changing U.S. policy to exempt export sales of agricultural commodities, food products, and agricultural inputs from the broad economic sanctions currently imposed on targeted countries. They have joined with firms in the pharmaceutical and manufacturing sectors to call for a comprehensive review of the economic impact of these sanctions and for limits on the executive branch's use of sanctions to restrict trade. Opposition to exempting sales of agricultural commodities and food products from current sanctions is, by contrast, somewhat more diffuse. Some object to the loosening of trade restrictions with certain countries. For example, they want to continue the comprehensive trade embargo on Cuba that prohibits the sale of agricultural commodities and food products along with almost all other commercial trade involving Cuban government entities. Others contend that the President should have maximum flexibility and tools to use in conducting foreign policy. Coming largely from the foreign policy and defense community, they see the use of sanctions as a "legitimate and effective" policy tool, and generally draw little distinction between prohibiting sales of food and prohibiting exports of all other products.

Those in favor of exempting U.S. agricultural commodities and food products from economic sanctions imposed for foreign policy and national security reasons argue that:

- (1) Sales lost because of these decisions have had a disproportionate economic impact on the U.S. agricultural sector, which depends heavily on exports to generate income (referring to the fact that one-third of U.S. farm production is currently exported). In this view, the imposition of sanctions undermines the more market-oriented farm policy objectives laid out in the 1996 Freedom to Farm Act that assumed continued and increased access to foreign markets.
- (2) Prohibitions undermine the credibility and reputation of the United States as a reliable supplier to foreign customers. Advocates calling for a policy change point out that agricultural exporting competitors (Argentina, Australia, Canada, and the European Union) have benefitted by increasing their exports to markets now closed to the United States because of sanctions. They further claim that the countries targeted by U.S. sanctions tend to diversify their sources of agricultural imports and/or seek to become more self-sufficient and that there is a longer-term negative impact (beyond the period during which sanctions are in effect) on U.S. export competitiveness in these markets.
- (3) Because withholding food results in malnutrition and possible starvation among the poor in sanctioned nations, opponents of sanctions argue that it is immoral to use food as an instrument of U.S. foreign policy. In this view such actions do not influence the behavior of nations, and usually have little effect on the standard of living of the targeted political leadership and the elite of the nation responsible for the actions objectionable to the U.S..

Those opposed to explicitly exempting food, or granting the President discretion to exclude food, from U.S. economic sanctions policy argue that:

- (1) Comprehensive sanctions are an essential diplomatic tool to bring about a change in the policies and practices of a country hostile to U.S. foreign policy and national security objectives (i.e., fighting terrorism, limiting nuclear proliferation, thwarting aggressive action against neighboring countries that are U.S. allies, etc.). In this view, the President should have maximum flexibility to determine the most effective use of sanctions (i.e., neither requirements for specific inclusions, nor prohibitions against specific exemptions, of specified products).
- (2) Exempting food exports from sanctions can result in the leadership of a targeted country using food imported or received from the United States as a political tool to reward those supportive of the policies that prompted the sanction, or to coerce others to accept those policies.
- (3) Use of the economic sanctions tool still gives the President discretion to sell or donate food for humanitarian reasons. Current statutory authorities have allowed the executive branch to approve U.S. commodity sales to Iraq under the UN's "oil-for-food" program, the mailing of food parcels and the limited donation and sale of food and other agricultural products to Cuba, and U.S. food aid shipments to North Korea and Sudan.

Legislative Activity in the 106th Congress

During the 106th Congress, Members have introduced more than 20 pertinent bills, five committees have held hearings, and four Senate committees and two House committees have reported out bills on economic sanctions and their impact on agriculture. In the first session, the House passed one sanctions measure with implications for the agricultural sector. The Senate approved an amendment to a spending bill (later dropped in conference) that would have gone further in changing sanctions policy than was proposed by the House bill. In the second session, provisions were added to the House and Senate FY2001 agriculture spending bills (H.R. 4461; S. 2536) to exempt agricultural and medical products from U.S. unilateral sanctions; these provisions are likely to be removed and modified to reflect a June 27 compromise agreement prior to floor action. The Senate Foreign relations Committee reported legislation (S. 382) on March 23, 2000 that lays out specific procedures for future sanctions proposals by the President. Some of the bills introduced and amendments offered go further and are broader in coverage than the Administration's policy change announced in late April 1999.

The First Session

The House and Senate last year passed measures that differ on how each proposes to exempt agricultural exports from U.S. sanctions policy. On June 15, 1999, the House passed H.R. 17 (Selective Agricultural Embargoes Act of 1999) under suspension of the rules. This measure laid out procedures for Congress to approve or disapprove future embargoes announced by the President on agricultural products when such an embargo is not a part of an embargo on all products to a targeted country. Under this proposal, an embargo would end 105 days after it is announced if the Congress in a joint resolution disapproved the President's action. If Congress approved the embargo within a 100-day window after receiving the President's report on the reason for the embargo, the embargo would last until: (1) the date determined by the President, or (2) one year after the resolution is enacted, whichever is earlier.

H.R. 17 specifically addressed the type of sales restriction illustrated by President Carter's decision in 1980 to impose an embargo only on sales of grain and soybeans to the Soviet Union. If enacted, its provisions would have applied only to any future decision made by the President to selectively embargo agricultural and food products. It would not have ended the trade restrictions imposed on such exports on countries covered by current economic sanctions.

On August 4, 1999, the Senate adopted an amendment (offered by Senators Ashcroft and Hagel) to its version of the FY2000 agriculture appropriations bill (S. 1233) proposing to exempt commercial sales of agricultural commodities, food products, medicine, and medical products from current U.S. unilateral sanctions. This amendment would have allowed the President to withdraw this exemption from current sanctions (i.e., add sanctions back) or to include agricultural commodities in future sanctions. Presidential decisions would only take effect if Congress voted in advance (following specified procedures and a timetable) in favor of such action. A motion to table the amendment (offered by Senators Helms and Torricelli) was defeated on a 29-70 vote. There was no comparable provision in the House-passed appropriations bill (H.R. 1906). Strong opposition by some members in the House to the Senate amendment (particularly because of its easing of the U.S. trade embargo on Cuba) threatened conference agreement between the House and Senate. Ultimately, the embargo provisions were dropped from the conference agreement, following leadership

intervention and heavy pressure to get additional money out to the farm sector as quickly as possible. As part of the agreement to drop the sanctions language, Senate sponsors got a commitment from their leadership that they would be given an opportunity to bring a sanctions exemption bill to the Senate before the end of the session.

The Senate-passed amendment would have gone beyond the Administration's policy change by allowing commercial sales of agricultural products also to Cuba and North Korea. This amendment would not have applied to Iraq, which is subject to a multilateral sanctions regime administered by the United Nations to which the United States is a party. The amendment's language expanded coverage of the agricultural products covered by this exemption to include non-food commodities (e.g., cotton and tobacco) and provided for a more streamlined export licensing process for commercial sales of these products. Some in the Administration signaled their opposition to the amendment, arguing that to require the President to secure congressional approval of sanctions (which could include restricting exports of farm commodities) would limit the President's flexibility in using sanctions as a tool to advance foreign policy and national security objectives.

In other action of interest to the U.S. agricultural sector, Congress in fall 1999 made permanent earlier authority given the President to waive the prohibition on access to USDA export credit guarantees by countries (e.g., India and Pakistan) subject to non-proliferation sanctions (Section 9001 of P.L. 106-79).

The Second Session

Activity on proposals to exempt food and medical products from U.S. unilateral economic sanctions has continued into the second session of the 106th Congress. A major vehicle has been the FY2001 agriculture appropriation. Other proposals are contained in a comprehensive bill reauthorizing U.S. export control law.

FY2001 Spending Bills. Both the House and Senate Appropriations Committees in early May 2000 approved amendments to their FY2001 agriculture appropriation bills (*H.R. 4461*; *S. 2536*) that, by and large, would permanently exempt agricultural and medical products from current and future U.S. unilateral economic sanctions imposed for foreign policy or national security reasons. An analysis of these amendments as originally reported appears later in this report.

Compromise Agreement. After a long period of negotiations between opponents and supporters of the exemption provision, which had been sponsored in the House version primarily by Representatives Nethercutt and Emerson, a compromise was developed early on June 27. This compromise reportedly would permit U.S. exports of food and medicine to Cuba, North Korea, Iran, Sudan, and Libya, but under tightly regulated conditions, especially for Cuba. More specifically, sales to Cuba could not be supported by either U.S. private or government-backed credit. The ban reportedly would prevent credit guarantee programs, export subsidies, direct barter arrangements, and other assistance from facilitating exports. The agreement also would ban tourist travel to Cuba, unless it is to facilitate commercial sales, and prohibit both Cuba and Iran from exporting their own goods to the United States, among other provisions.

On June 29, congressional leaders were considering whether to include the compromise in an FY2000 supplemental conference report that will be part of the FY2001 military construction appropriation (H.R. 4425). Another possibility is attaching the provision to the FY2001 USDA appropriation when it reaches a House-Senate conference late in the session. However, whether the House and Senate will accept the language, and which legislative vehicle might ultimately carry it, were unclear as of June 29.

Earlier House Action. On May 4, 2000, the House Appropriations Agriculture Subcommittee adopted by voice vote an amendment to the FY2001 agriculture spending bill offered by Representative Nethercutt to exempt food and medical products from current and future U.S. unilateral economic sanctions. Most committee debate on this amendment concerned whether the exemption should apply to Cuba. The substance of Nethercutt's amendment is the same as that found in S. 2382, a bill reported by the Senate Foreign Relations Committee on March 23, 2000, except that it does not include the Senate bill's language laying out the detailed congressional procedures and process to be followed in considering future presidential requests to impose sanctions that cover these specific products. The provisions in the Nethercutt amendment are broader in scope than the one he offered in June 1999 during full Appropriations Committee markup of the FY2000 spending measure, which was rejected on a 24-28 vote.

During full Committee consideration on May 10, Representative DeLay moved to strike the Nethercutt amendment, arguing that lifting sanctions, particularly with respect to Cuba, was at odds with American values. The DeLay amendment, which would have maintained the prohibition on most exports to Cuba, and the Administration's current regulatory policy on food and medical product sales to all three sanctioned countries, was defeated (24-35). Supporters of the exemption argued that current sanctions are not fair to U.S. farmers and inflict suffering on the innocent while doing little to change the behavior of the leaders of sanctioned countries.

On May 24, the House Rules Committee reported H.Res. 513, the rule governing House floor consideration of the FY2001 agriculture appropriation bill (H.R. 4461). Opponents to the sanction exemption provision planned to raise a point of order against the provision because it legislated in an appropriations bill, a violation of House rules. Among those in this camp were those strongly opposed to removing any trade restrictions on Cuba and others concerned about attaching a controversial rider to an appropriation bill. Knowing that a point of order likely would have been sustained on the floor, exemption proponents sought but did not get language in the rule protecting the provision from a point of order. Since this made it likely that the exemption provisions would have been stripped from the bill, supporters of the sanctions amendment (along with some others objecting to last-minute funding changes in the underlying bill) threatened to defeat the rule. Facing the possibility that the rule would be voted down, the House leadership decided to delay consideration of this legislation, scheduled for debate on May 25, until after the Memorial Day recess.

Senate Action. On May 9, the full Appropriations Committee adopted by voice vote an amendment (Title IV of Division B of S. 2536, the Food and Medicine for the World Act) offered by Senator Dorgan and modified by Senator Byrd to the Senate version of FY2001 agriculture appropriations bill. It is substantively the same as the House Appropriations Committee-approved language found in H.R. 4661, with some modifications to require the House and Senate to use their respective "expedited procedures" when considering a

Presidential request to impose a future sanction on food and medical products. The controversy in the House over the sanction exemptions, along with Senate disagreements over unrelated matters, has prompted the Senate to delay floor consideration of its version of the FY2001 funding measure (S. 2536) until the House completes action on its legislation.

Administration View. The Office of Management and Budget's (OMB) "Statement of Administrative Policy" on H.R. 4661 restates the President's belief that commercial exports of food and other basic necessities should not be used as a foreign policy tool "except under the most compelling circumstances." It also describes the administrative actions taken in 1999 to exempt food and medicine from the Executive Branch-imposed unilateral sanctions then in place and announced since. OMB's letter indicated the Administration would support codifying its current policy in legislation and "views favorably certain legislative proposals in this spirit." The statement, however, expressed strong objection to currently worded provisions that would require advance congressional approval before the President could restrict the export of agricultural and medical products in future sanction decisions. The contention is that this "would seriously limit the President's ability to implement foreign policy and would have grave implications for our non-proliferation, counter-terrorism, and counter-narcotics initiatives."

Other Senate Committee-Reported Bills. Three other Senate committees have cleared relevant bills for floor action. The Agriculture Committee on May 26, 1999, approved S. 566 on a 17-1 vote. It would exempt commercial sales of agricultural commodities, livestock, and value-added products from current and future U.S. unilateral economic sanctions. In an amendment offered by Senator Conrad during markup, the measure was revised to allow the President to review each exemption to a current sanction on a country. The President could include agricultural products in sanctions in only two instances: (1) when war is declared, and (2) when included for national interest reasons and Congress fails to enact a resolution of disapproval. If enacted, commercial sales of agricultural products to countries subject to sanctions would be allowed, unless the President determines that such sales should be included in a sanctions regime on a specific country and Congress does not override that decision. The Committee filed its report on the bill (S.Rept. 106-157) on September 13, 1999.

The Senate Banking Committee also addressed this issue in the Export Administration Act of 1999 (S. 1712), reported on October 8, 1999. *Title IV* would exempt agricultural commodities, medicine, and medical supplies from the application of the foreign policy export controls laid out in the bill, but not from export controls imposed in response to national security threats. The bill's language further requires the President to terminate any export control on these products mandated by other laws, except for a control that any future law specifically reimposes. *Title IV's* proposed exemption, though, would not apply to a country subject to an embargo imposed under the Trading with the Enemy Act (specifically Cuba and North Korea). S. 1712 was placed on the Senate calendar on March 8, 2000, and may be brought up at the discretion of the majority leader with the concurrence of the minority leader and chairman of the Banking Committee.

The Foreign Relations Committee on March 23, 2000, in reporting the Technical Assistance, Trade Promotion and Anti-Corruption Act for FY2001 (S. 2382), included provisions to exempt food and medical exports from current and future U.S. unilateral sanctions (*Title I - Subtitle C*). The language is similar to that offered by Senator Ashcroft,

included in the Senate's FY2000 agriculture appropriations measure in August 1999, but later dropped by conferees at the behest of House leadership because of the Cuba issue. Because the Senate Banking Committee requested a referral of the bill to consider certain provisions over which it has jurisdiction and because of uncertainty over when S. 2382 might move to the floor for debate, some Senators decided to use the FY2001 agriculture spending bill as the legislative vehicle to press the food and medicine exemption issue.

Analysis of Proposals

The most significant policy change associated with the nearly identical provisions in the reported agriculture appropriations bills to exempt agricultural and medical products from current U.S. unilateral economic sanctions would be to statutorily extend the exemption to Cuba and North Korea, neither of which was covered by the Administration's 1999 policy change with respect to Iran, Libya, and Sudan. This change would not apply to Iraq, which is subject to a multilateral sanctions regime implemented by the United Nations. The amendment would also codify this exemption and the terms under which it operates.

Other changes (in the committee-reported versions compared to current policy) would broaden the exemption to include additional agricultural commodities, streamline the process that U.S. exporters use to obtain licenses to make sales to sanctioned countries, and place conditions on sales with reference to a list of state sponsors of "international terrorism." The most significant would codify current policy that prohibits making available U.S. government credits, credit guarantees, and other financial assistance to facilitate agricultural sales to sanctioned countries.

Extension of Food and Medical Exemption to Cuba

The exemption-from-current-sanctions provision in the committee-reported bills appeared to supersede statutory provisions in the Cuban Liberty and Democratic Solidarity Act (P.L. 104-114) that codify existing prohibitions on all U.S. trade and other transactions under the comprehensive U.S. embargo imposed on Cuba in 1962. The proposed amendment would not apply this exemption to any product category other than exports of agricultural and medical products, nor change the ban on the import of any Cuban-origin product.

Current U.S. Policy on Donation and Sale of Food to Cuba. Implementing statutory authority, the U.S. Department of Commerce's Bureau of Export Administration (BXA) administers regulations that prohibit most exports of U.S. origin to Cuba. The underlying rationale for the limited exceptions identified below is to ensure that the Cuban government, operating through its import entities, does not receive any financial benefit from agricultural products that it might seek to import from the United States. Three exceptions allow for the donation and sale of food and agricultural products to eligible non-governmental entities and private businesses. First, regulations allow U.S. individuals to ship gift parcels of food, seeds, veterinary medicines and supplies, among other specified items, to individuals in Cuba without a license. Eligible U.S. charitable organizations with an established record in delivering humanitarian donations in Cuba may also export food without license to non-government entities. Exports of "commingled food products donated for relief" totaled \$140,457 in 1997, \$62,834 in 1998, and none in 1999. Second, BXA regulations require an export license,

issued on a case-by-case basis, for the shipment of donated food (among five other categories) for humanitarian purposes to eligible beneficiaries in Cuba. Exports apparently covered by such licenses totaled \$12,681 in 1997 (corn seed and cardamom), none in 1998, and \$3,730 in 1999 (agar-agar, derived from vegetable products). Third, the President announced on January 5, 1999, that U.S. policy will now allow "the sale of food and agricultural inputs to independent non-governmental entities, including religious groups and Cuba's emerging private sector." The BXA's final rule issued on May 13, 1999, authorizes export licenses to be issued for the sale of permitted products to eligible recipients in Cuba and the procedures to be followed in transporting such exports.

Cuba as a Food Importer. While sales to Iran, Libya, and Sudan under current policy have been quite small relative to their total agricultural imports, U.S. farmers, commodity groups, and agribusiness eye Cuba as a promising market. Calling for a broadening of U.S. policy to also exempt food from sanctions in Cuba, they argue that U.S. agriculture has lost out to foreign competitors in making sales to a sizable, nearby market.

Cuban agricultural imports averaged almost \$700 million annually in the 1996-1998 period (see table). Leading commodities imported were wheat, rice, lentils, flour, and corn. Food and agricultural imports represented 18% of total Cuban merchandise imports, and have declined as a share of total imports since the early 1990s. Top suppliers are France, Argentina, Canada, Spain, and China, which accounted for some two-thirds of Cuba's food imports.

Prior to 1960, when the U.S. government began restricting U.S. exports in response to Castro's policies, U.S. firms sold just over \$140 million of agricultural products to Cuba each year. U.S. sales accounted for 89% of the island's agricultural imports in the 1957-59 period. Then, the top U.S. commodities exported were rice, pork, wheat, wheat flour, and dry beans. Cuba in 1959 was the 7th largest market for U.S. agricultural exports; however, the island accounted for only 3.4% of all such exports to the world in the pre-1960 period.

U.S. agricultural interests argue that exempting agricultural exports from the U.S. embargo on Cuba would result in an opening that yields substantial sales. They hold that such a policy change will give U.S. exporters (particularly of rice and wheat) a competitive edge if Cuba takes advantage of its proximity to buy from its nearest supplier in order to save the cost of transporting commodities and food from its current suppliers (France, Canada, Argentina) located much farther away. Cuba reportedly could save up to \$100 million in transportation costs if government officials decided to buy primarily from U.S. agricultural exporters.

Table 1. CUBA: Food and Agricultural Imports, 1996-98

	ANNUAL AVERAGE		PRINCIPAL SUPPLIERS
	<i>million dollars</i>	<i>thousand metric tons</i>	
Wheat	132	736	France, Canada, Argentina
Rice, Milled Paddy	85	366	China, Thailand
Pulses (e.g., lentils)	43	92	
Wheat Flour	39	135	European Union
Corn	40	226	Argentina
Dry Skim Milk	48	48	New Zealand
Soybean Oil	29	44	
Chicken Meat	20	24	
Meat, Prepared	20	11	France, Canada, Spain
Palm Oil	16	28	
Food, Prepared	12	10	Brazil
Sunflower Seed Oil	11	11	
<i>Subtotal, Above Products</i>	496	1,731	
Other Food Products	64		
<i>Total, Food Imports</i>	560		
Other Agricultural Products	134		
Total, Food & Agricultural Imports	\$694		
Food Import Share of Total Agricultural Imports	81%		

Note: Supplier data is not readily available for some commodities.

Source: Food and Agriculture Organization database; CIA, *Cuba: Handbook of Trade Statistics, 1999*.

A recent study projects that this opening could result in \$400 million in U.S. agricultural exports to Cuba within 5 years (Paula Stern, *The Impact on the U.S. Economy of Lifting the Food and Medical Embargo on Cuba*), and there have been estimates that sales within a 12-24 month period could reach \$100 million.

Expectations of large immediate U.S. sales to the island may be unrealistic, however, according to some analysts. They point to Cuba's limited financial resources, its reliance on barter transactions to finance agricultural imports, its denial of access to U.S. government financing under pending proposals, and the possible application of restrictive rules under current embargo regulations that would prohibit U.S. banks from extending commercial trade financing. They also suggest that it is uncertain that Cuba would purchase from the United States. There may be pressure to maintain trade ties with some of its "socialist partners" supplying such key commodities as rice, and resistance to reliance on just one single supplier. Some have observed also that the Cuban government may not be prepared for or interested in taking advantage of U.S. trade openings.

Coverage of Agricultural Products

The provisions in the agriculture appropriations bills (as reported) would broaden the types of agricultural products covered by the proposed food exemption to unilateral sanctions. They include “any agricultural commodity, food, feed, fiber, or livestock,” and any derived product. Livestock is defined to include “cattle, sheep, goats, swine, poultry (including egg-producing poultry), equine animals used for food or in the production of food, fish used for food, ... other animals designated” by the Secretary of Agriculture, and insects. Current Treasury regulations followed to implement Administration policy that permits sales to Iran, Libya, and Sudan list the agricultural commodities and food products that are eligible to be licensed. Treasury’s list encompasses many of the same commodities and food products allowed by the proposed legislation, but does not allow for sales of non-food commodities like cotton (a fiber) and tobacco. The Administration’s rationale for excluding these non-food commodities is that they could be used for military purposes. Concern about the use of fertilizer and agri-chemicals for military purposes is reflected as well in Treasury regulations that do not allow sales of these items (including insecticides and pesticides) as agricultural products to sanctioned countries.

Conditions Placed on Governments that Sponsor International Terrorism

Proposed appropriations changes (as earlier reported) would place conditions on the sale of agricultural commodities and medical products to the government of any country that supports international terrorism. Although both product categories would be exempted under the proposed changes from the broad sanctions that apply to U.S. commercial exports to a country so designated, amendment language: (1) reiterates that existing statutory prohibitions on providing U.S. government assistance (foreign aid, export assistance, credits or credit guarantees) “shall remain in effect” while the government of a country is listed as a sponsor of international terrorism under Section 620A of the Foreign Assistance Act of 1961. The proposal also would allow sales to be made only without the benefit of any federal financing and other programs (in effect expanding the assistance prohibition to apply to additional assistance programs not referenced by section 620A), and would require that agricultural export sales be made only under a license issued by the U.S. government covering contracts made during a one-year period. Medical product sales would be subject to more prescribed licensing requirements, likely those currently in effect.

In its April 2000 *Patterns of Global Terrorism* report, the U.S. Department of State again designated 7 countries that have been on the list of state sponsors of terrorism since 1993. Of these, 5 countries are subject to U.S. unilateral economic sanctions: Cuba, Iran, Libya, North Korea, and Sudan. Although Iraq is listed, U.S. policy allows export licenses to be issued for products eligible to be purchased by Iraq under terms of the multilateral sanctions regime administered under the United Nations oil-for-food program. Syria also is listed as a terrorist sponsor, but U.S. merchandise trade with that country is not restricted.

The reference to state sponsors of terrorism in the context of debating a food and medical exemption in U.S. sanctions policy first surfaced when the Senate adopted Senator Dodd’s amendment to the FY1999 agriculture appropriations bill in mid-July 1998 to exempt the sale of food, fertilizer, medicine and medical equipment from current and future unilateral sanctions. Because of concern that such a policy change would loosen the U.S. trade embargo with Cuba and other countries, Senator Torricelli offered an amendment to prevent

Dodd's amendment from applying to any country that supports international terrorism. The Senate adopted this amendment by voice vote, after rejecting a motion to table it. House-Senate conferees later dropped both amendments, largely over differences of opinion over the Torricelli provisos. Most observers acknowledged that the Torricelli text would have had the effect of not allowing food and other exempted products to be exempt from the sanctions currently imposed on 6-affected countries, because all were on the State Department's list of terrorist states. This issue next received attention during the debate on Senator Ashcroft's amendment to the FY2000 agriculture appropriations bill in early August 1999 to exempt agricultural commodities, food, medicine and medical devices from current and future U.S. unilateral sanctions. To address concerns that opponents raised, Ashcroft added language to require that exempted sales to governments supportive of international terrorism be subject to export licensing requirements and not benefit from federal support (such as financing, export subsidies, credit guarantees, or promotion assistance); the Senate adopted the Ashcroft amendment by voice vote.

Placing conditions on the operation of the proposed exemption appears to reflect a compromise. Those who favor codifying these conditions view them as a check on prospective sales, because it effectively removes any discretion the Executive Branch can exercise to make available any form of federal support of agricultural sales to a country that remains on the "terrorist state" list. Since the State Department has never removed any country placed on this list, codification could be viewed as a de facto fixing of the status quo with respect to these countries. Supporters of the exemption appear to have accepted these conditions as the price to pay to secure the codification of a policy that exempts food and medical products from inclusion in current and future U.S. unilateral sanctions, leaving the terrorist designation issue to be addressed another day.

Prohibition on Use of U.S. Government Assistance for Export Sales. The proposals for change (as earlier reported) affirm the statutory prohibition in Section 620A of the Foreign Assistance Act of 1961 against using most forms of federal assistance to facilitate U.S. agricultural export sales to countries determined to be sponsors of international terrorism, and expands the program categories covered by this prohibition. Further, the scope of this prohibition differs depending on whether or not a country subject to U.S. unilateral sanctions continues to be listed as a terrorist state.

Terrorist State. If the Secretary of States lists a sanctioned country as a terrorist state, the amendment affirms existing authority which prescribes that certain U.S. government programs cannot be used to assist agricultural exports under the proposed food exemption. Section 620A of the Foreign Assistance Act of 1961 [22 U.S.C. 2371] prohibits providing to such countries assistance under any U.S. foreign aid program, USDA's P.L. 480 (Food for Peace) concessional credit and food aid programs, and programs authorized by the Peace Corps Act and the Export-Import Bank Act. This section, however, does allow for the waiver of portions of this prohibition to a country if the President (with prior consultation with relevant congressional committees) determines that national security interests or humanitarian reasons justify such action. For example, current law gives the President authority (if exercised) to allow the P.L. 480 credit program to be used to assist U.S. agricultural export sales to a country. Section 620A, however, does not explicitly prohibit the use of other U.S. government programs (including some that USDA administers) that exporters might seek to use to facilitate licensed exports to countries designated as sponsors of international terrorism.

This would change under the proposed appropriations amendments, which would extend the prohibitions to cover all federal financing programs, direct export subsidies, federal credit guarantees, and federal promotion assistance programs. With respect to currently active USDA programs that support agricultural exports, expanding the prohibition on U.S. government assistance would effectively apply to credits extended under the Food for Progress program, two export subsidy programs (Export Enhancement and Dairy Export Incentive), two credit guarantee programs (Short-Term [GSM-102] and Intermediate-Term [GSM-103]), and three promotion programs (Market Access, Foreign Market Development, and Quality Samples). It appears, however, that U.S. food aid extended under USDA's Section 416 surplus commodity donations and Food for Progress programs would not fall under the scope of this broadened prohibition. (The June 27 House compromise would bar Cuba from using *any* U.S. credit, including private sources, to finance its purchases.)

Non-Terrorist State. Under the Appropriations-reported amendment, if a sanctioned country is taken off, or is not listed on, the State Department's list of countries that support international terrorism, the scope of prohibitions on U.S. government assistance available to facilitate exports would appear to be narrower. Language reads that the termination of an agricultural sanction shall not apply when USDA policy in effect on the date of enactment prohibits the use of four export assistance programs with respect to a sanctioned country: (1) surplus agricultural commodity donations made under so-called Section 416(b) authority, (2) the short-term export credit guarantee program (GSM-102), (3) the intermediate-term export credit guarantee program (GSM-103), and (4) export subsidies made under the Dairy Export Incentive Program. However, if the use of any of these programs had not been prohibited by law, regulation or policy prior to this amendment's enactment, it would appear that the President would have discretion regarding making available any of these programs to facilitate agricultural sales under the food exemption to a sanctioned country. The Executive Branch would also seem to have discretion to make available other active U.S. government export programs (identified in the *Terrorist State* section above) to facilitate agricultural exports to a country without a terrorist-state designation.

Implications. The intent of further codifying a policy to prohibit use of USDA export financing programs to facilitate agricultural product sales, as some point out, is to have a sanctioned country pay up front for any food purchases. By requiring a country to use, for example, its export earnings to buy food rather than be given access to U.S. credits, they argue, would reduce its ability to divert such resources to develop military or other capabilities that challenges U.S. foreign policy interests. Some lawmakers from agricultural states and commodity trade associations, however, argue that U.S. exporters will not be able to conclude sales (such as selling wheat to Iran) until U.S. government policy allows for the use of USDA credit and guarantee programs to facilitate such sales. They point to the competitive advantage held by other exporting countries that use credit or export subsidies to sell to these same markets that U.S. exporters seek to reenter. Top USDA officials have also expressed reservation about codifying such a prohibition, largely because it removes the discretion the Executive Branch now has to exercise if the diplomatic relationship with a sanctioned country improves.

Export Licensing Requirement. The proposed sanctions provisions (as earlier reported by committee) streamline and simplify the type of license an exporter must obtain to ship most agricultural commodities to sanctioned countries. This provision addresses

concerns expressed by U.S. agricultural exporters that Treasury regulations that apply to licensing agricultural sales to Iran, Libya, and Sudan are cumbersome and time consuming.

Current Treasury regulations that govern agricultural sales to those three countries require U.S. exporters to have an export license before any shipment can be made. With respect to these countries (all covered by this designation), an exporter can apply for a **general** or a **specific** license, depending on the payment and financing terms of proposed sales. Under a general license, permitted payment terms include cash in advance, sales on open account with certain limitations, or financing by third country banks that are neither U.S. individuals nor entities of the governments of these three countries. U.S. banks would be permitted to advise or confirm letters of credit issued by third country banks, but are prohibited from providing any trade financing. Under a specific license, OFAC will consider applications from U.S. banks to participate in financing sales on a case-by-case basis, where such financing arrangements would not undermine overall compliance with U.S. sanctions. These regulations are issued pursuant to the Export Administration Act of 1979 [50 U.S.C. Appendix 2405(j)] that requires a “validated license” to export any good to a country determined to be a sponsor of international terrorism.

Treasury regulations further detail procedures, which differ by type of product, to be followed to make licensed sales. For eligible **bulk agricultural commodities**, regulations provide for an expedited licensing process. If approved, one license is in effect over a specified time period, authorizing an exporter to respond to requests for bids, enter into binding contracts, and perform under these contracts, subject to certain conditions. For **all other food items**, a two-step procedure applies. The *first* step requires a seller to obtain a general export license to enter into contracts that make performance contingent upon final OFAC approval, disclose all parties with an interest in the sale, and lay out all terms of the sale. The *second* step requires the prospective seller to apply to OFAC for a specific license (granted after a case-by-case contract review) that authorizes performance under the contracts).

The earlier committee-reported amendment would allow agricultural and medical product sales to be made to a sanctioned country listed as a sponsor of international terrorism under a one-year license issued by the U.S. government. For agricultural products, this license would apply to contracts an exporter makes during a one-year period, and cover all shipments made against a single contract for the 12-month period beginning on the date the contract is signed. Language stipulates that licenses issued for exports of food and other products used for food production “shall not be more restrictive than general licenses.” This would appear to drop the distinction (described above) between bulk agricultural commodities and all other food products that OFAC currently follows in issuing licenses. Non-food agricultural commodities, though, would appear not to be covered by this “general license” provision, giving Treasury discretion as to how to license such items. Looking ahead, if the State Department took a country off the terrorist state list, some might suggest that export licensing requirements would no longer need to apply on agricultural export sales to that country.

LEGISLATION (*bills that have seen committee or floor action*)**P.L. 106-78 / H.R. 1906 (Skeen); S. 1233 (Stevens)**

Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2000. Senate replaced H.R. 1906 with text of S. 1233 on August 4, 1999, including an amendment exempting agricultural and medical products from current and future unilateral economic sanctions, and requiring the President to obtain advance congressional approval for including such products in future sanctions decisions. Motion to table amendment was rejected on a 70 - 29 vote. Conference agreement, reported September 30 (H.Rept. 106-354), dropped this sanctions amendment.

H.R. 17 (Ewing)

Selective Agricultural Embargoes Act of 1999. Introduced January 6, 1999; referred to Committees on Agriculture, and International Relations. Agriculture Committee and International Relations Committee reported the bill May 20, and June 14, 1999, respectively (H.Rept. 106-154, Parts I & II). Passed House under suspension of rules June 15, 1999. Placed on Senate legislative calendar under general orders on September 21.

H.R. 4461 (Skeen)

Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2001. Trade Sanctions Reform and Export Enhancement is Title VIII. Reported as an original measure by the Appropriations Committee on May 16, 2000 (H.Rept. 106-619). Rule for floor debate (H.Res. 513) reported by the Rules Committee on May 25.

S. 566 (Lugar)

Agricultural Trade Freedom Act. Introduced March 8, 1999; referred to Committee on Agriculture, Nutrition, and Forestry. Committee approved measure (17-1) and ordered it reported, with an amendment in the nature of a substitute, on May 26, 1999. S.Rept. 106-1-57 filed, and placed on legislative calendar under general orders, on September 13.

S. 1712 (Gramm)

Export Administration Act of 1999. Includes as Title IV - Exemption for Agricultural Commodities, Medicine, and Medical Supplies. Ordered to be reported by the Banking Committee on September 23, 1999. S.Rept. 106-180 filed on October 8, and placed on the calendar under general orders. Laid before the Senate, but returned to the calendar, on March 8, 2000.

S. 2382 (Helms)

Trade Sanctions Reform and Export Enhancement Act of 2000 (Title I, Subtitle C). Ordered to be reported as an original measure by Committee on Foreign Relations on March 23, 2000. S.Rept. 106-257 filed, and placed on legislative calendar under general orders, on April 7. Referred to the Committee on Banking, Housing, and Urban Affairs on April 11.

S. 2536 (Cochran)

Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2001. Food and Medicine for the World Act is Title IV of Division B. Ordered to be reported by the Appropriations Committee by voice vote on May 9. S.Rept. 106-288 filed, and placed on legislative calendar under general orders, on May 10.